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IDAHO PERSONNEL COMMISSION  
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**IDAHO PERSONNEL COMMISSION**

**STATE OF IDAHO**

	)	
	)	
IDAHO DEPARTMENT OF CORRECTION	)	
	)	
Petitioner/Respondent,	)	
	)	IPC NO. 97-03
	)	
vs.	)	
	)	
WAYNE WEIRUM	)	<b>DECISION AND ORDER ON</b>
	)	<b>REQUEST FOR FEES AND</b>
	)	<b>COSTS</b>
Respondent/Appellant.	)	
_____	)	

THIS MATTER comes before the Commission on Respondent Wayne Weirum's (Weirum) Request for Attorney Fees and Costs. The Commission entered its decision on the Department of Correction's (DOC) petition for review in favor of Weirum on May 13, 1998. Respondent Weirum was represented by Howard A. Belodoff, Esq.. Petitioner DOC was represented by Ron Christian, Deputy Attorney General.

Having reviewed Weirum's request, supporting affidavit, and the record, the Commission  
HEREBY ORDERS AS FOLLOWS:

1. In the Commission's decision on the petition for review, entered on May 13, 1999, the Commission affirmed the hearing officer's decision in favor of respondent Weirum, including the hearing officer's finding that DOC acted without a reasonable basis in fact or law and the resulting award of reasonable attorney fees and costs. (Commission's Decision and Order, p. 18).

2. Accordingly, Weirum is entitled to an award of reasonable attorney fees and costs in the proceedings before the Commission on DOC's petition for review.

3. Within ten (10) days of the Commission's decision, Weirum filed a memorandum of costs together with a previously filed supporting affidavit. *See* IDAPA 28.01.01.202.08.

4. IPC Rule 202.08 (IDAPA 28.01.01.202.08) directs the Commission, in awarding reasonable fees and costs, to take into account factors set forth in IPC Rule 201.11 (IDAPA 28.01.01.201.11). To this end, the Commission finds:

a. Time and Labor Required: The Commission finds that the time and labor spent representing Weirum was excessive. The time claimed is more than double the time claimed in two recent proceedings which were of similar length and complexity. *See, Anderson v. Idaho Dep't of Correction*, IPC No. 96-11, Decision and Order on Request for Attorney Fees and Costs, (August 18, 1998), *Wikse v. Idaho Department of Health and Welfare*, IPC No. 96-12, Decision and Order on Request for Attorney Fees and Costs (June 17, 1998).

b. Experience and Ability of the Attorney: Weirum's attorney has practiced law in the state of Idaho for over twenty (20) years. His abilities were amply demonstrated by successfully representing his client before the hearing officer and the Commission.

c. Prevailing Charges for Like Work: The hearing officer found that the claimed fee of \$165.00 per hour exceeds the rates previously approved in appeals to the Commission, but felt that a rate of \$150.00 per hour was in keeping with previous decisions (Hearing Officer's Order Awarding Attorney Fees and Expenses, p. 3). We find likewise.

d. Amount Involved and Results Obtained: Weirum claims \$11,995.00 in fees. While counsel for Weirum was successful in obtaining complete relief at both stages of the Personnel Commission process, we still believe that this amount is excessive for the reasons expressed above.

e. Awards in Similar Cases: Based upon the hours expended in matters of similar complexity, and our determination that the rate of \$150.00 per hour is reasonable for Mr. Belodoff's services, the Commission finds that total fees in the amount of \$6,000 is consistent with previous awards made by this Commission.

5. Weirum claims total costs in the amount of \$97.65. We find this amount (along with the items charged) reasonable.

IT IS HEREBY ORDERED that Weirum is awarded attorney fees in the amount of \$6,000.00 and costs in the amount of \$97.65 for a total award of \$6,097.65.

### **STATEMENT OF APPEAL RIGHTS**

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision.

Idaho Code § 67-5318.

(4)

DATED this 18th day of June, 1999.

BY ORDER OF THE  
IDAHO PERSONNEL COMMISSION

/s/

Sherry Dyer, Chair

/s/

Peter Boyd

/s/

Ken Wieneke

/s/

Don Miller

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the DECISION AND ORDER ON REQUEST FOR FEES AND COSTS in Weirum v. Idaho Dep't of Correction, IPC No. 97-03, was delivered to the following parties by the method stated below on the 19th day of June, 1999.

### FIRST CLASS MAIL

Howard A. Belodoff  
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Ken Bergquist  
Hearing Officer  
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### STATEHOUSE MAIL

Ron Christian  
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Office of the Attorney General  
Statehouse Mail

\_\_\_\_\_/s/\_\_\_\_\_  
Val E. Rodriguez  
Secretary to Executive Secretary

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